

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1372 of 1983

with

SPECIAL CIVIL APPLICATION No 4864 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BHUPENDRA N NAYAK & OTHERS

Versus

STATE OF GUJARAT & OTHERS

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Appearance: In both the matters:

MR GIRISH PATEL for the Petitioners.

MR NN PANDYA for Respondent no.1.

MR SM MAZGAONKAR for Respondent no.3.

None present for other respondents.

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 30/07/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The petitioners are the teachers of the respective colleges, the respondents herein. Due to the introduction of

10+2+3 system of education in the State of Gujarat, the petitioners were rendered surplus from the colleges and they have been absorbed in the higher secondary schools. The only question which has been raised by the petitioners in these Special Civil Applications is that the action of the respondents, the State and its functionaries, not to protect the pay of the petitioners which they were getting while working as teachers in the colleges on their absorption to the school is arbitrary. The respondents, the State and its functionaries, have taken the defence that the petitioners were not declared surplus by them and as such, they are not entitled for the protection of the salary on their absorption in the schools.

2. The learned counsel for the respondent does not dispute that the name of the petitioners were there in the list of surplus teachers prepared by the Government. The petitioners, alongwith these Special Civil Applications, filed a document annexure 'J' at page no.54, an extract of the aforesaid list, in which the name of one of the petitioner is there. In Special Civil Application no.1372 of 1983 in para no.17 the averments made, read as under:

The petitioner states that his name was included in the list of surplus teachers in the subject of Chemistry.

Alongwith the petitioner's name, the names of three other professors, viz., Prof. S L Chaudhari, (Gujarati), Prof. M M Patel (Physics) and Prof. V I Das (Biology) were also included in the list of surplus teachers and all were college surplus - teachers because of the introduction of 10 + 2 + 3 system.

In Special Civil Application No.4864 of 1982, the averments made by the petitioners therein at para no.15 are as under:-

The petitioners state that the names of the petitioners were included in the list of surplus teachers in the respective subjects.

The name of the petitioner no.1 was included in the list of surplus teachers in the subject of Gujarati. A true copy of the said list is annexed hereto and marked as Annexure 'J'. The petitioners state that the name of the petitioner no.2 was also included in the list of surplus

teachers in the subject of Physics and the name of the petitioner no.3 in the subject of Biology. Thus the names of all the petitioners were included in the list of surplus college teachers and they were college surplus teachers because of the introduction of 10 + 2 + 3 system.

In both these Special Civil Applications none of the respondents have filed the reply. The averments aforesaid made by the petitioners in these Special Civil Applications stand uncontrovert and as such, the same have to be accepted to be correct. When the names of the petitioners were included in the list of surplus teachers prepared by the Government it is highly unreasonable and unjustified on the part of the respondents to deny them the protection of their pay which they were drawing while working as teacher in the college on absorption in the school. The ground which has been given by the respondents not to protect their pay is arbitrary and it cannot be allowed to stand. The learned counsel for the respondent Shri N.N. Pandya, is unable to defend the orders impugned in this Special Civil Applications.

3. The net result of the aforesaid discussion is that both the Civil Applications deserves to be accepted. Order accordingly. These Special Civil Applications are allowed. Annexure 'J', the order of the respondent dated 8-3-1978 in Special Civil Application No.1372 of 1983 and annexure 'U', order of the respondent dated 8-3-1978 in Special Civil Application No.4864 of 1982 are quashed. It is further ordered that the petitioners shall be entitled for all the consequential benefits which follows on quashing of the aforesaid two orders i.e. for the protection of their pay which they were drawing as teachers of the college on their absorption as teachers in the school. The arrears payable to the petitioners on protection of their pay shall be determined by the respondent concerned, within a period of three months from the date of receipt of certified copy of this order, and the amount so determined shall be paid to the petitioners within a period of two months thereafter. Rule is made absolute with no order as to costs.

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